

## OCCUPATIONAL CODE (EXCERPT)

### Act 299 of 1980

#### ARTICLE 25

#### **339.2501 Definitions.**

Sec. 2501. As used in this article:

(a) "Employ" or "employment" means the relationship between a real estate broker and an associate broker or a real estate salesperson which may include an independent contractor relationship. The existence of an independent contractor relationship between a real estate broker and an individual licensed to the real estate broker shall not relieve the real estate broker of the responsibility to supervise acts of the licensee regulated by this article.

(b) "Independent contractor relationship" means a relationship between a real estate broker and an associate broker or real estate salesperson that satisfies both of the following conditions:

(i) A written agreement exists in which the real estate broker does not consider the associate broker or real estate salesperson as an employee for federal and state income tax purposes.

(ii) Not less than 75% of the annual compensation paid by the real estate broker to the associate broker or real estate salesperson is from commissions from the sale of real estate.

(c) "Limited service agreement" means a written service provision agreement by which the real estate broker and client establish an agency relationship in which certain enumerated services, as set forth in section 2512d(3)(b), (c), and (d), are knowingly waived in whole or part by the client.

(d) "Professional designation" means a certification from a real estate professional association demonstrating attainment of proven skills or education in a real estate occupational area and may include the right to use a title or letters after the licensee's name that represent the designation bestowed by the certifying entity.

(e) "Property management" means the leasing or renting, or the offering to lease or rent, of real property of others for a fee, commission, compensation, or other valuable consideration pursuant to a property management employment contract.

(f) "Property management account" means an interest-bearing or noninterest-bearing account or instrument used in the operation of property management.

(g) "Property management employment contract" means the written agreement entered into between a real estate broker and client concerning the real estate broker's employment as a property manager for the client; setting forth the real estate broker's duties, responsibilities, and activities as a property manager; and setting forth the handling, management, safekeeping, investment, disbursement, and use of property management money, funds, and accounts.

(h) "Real estate broker" means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those entities who with intent to collect or receive a fee, compensation, or valuable consideration, sells or offers for sale, buys or offers to buy, provides or offers to provide market analyses, lists or offers or attempts to list, or negotiates the purchase or sale or exchange or mortgage of real estate, or negotiates for the construction of a building on real estate; who leases or offers or rents or offers for rent real estate or the improvements on the real estate for others, as a whole or partial vocation; who engages in property management as a whole or partial vocation; who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others; or who, as owner or otherwise, engages in the sale of real estate as a principal vocation.

(i) "Real estate salesperson" means a person who for compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell, to buy or offer to buy, to provide or offer to provide market analyses, to list or offer or attempt to list, or to negotiate the purchase or sale or exchange or mortgage of real estate, or to negotiate for the construction of a building on real estate, or to lease or offer to lease, rent or offer for rent real estate, who is employed by a real estate broker to engage in property management, or who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others, as a whole or partial vocation.

(j) "Service provision agreement" means a buyer agency agreement or listing agreement executed by a real estate broker and a client that establishes an agency relationship.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1988, Act 16, Imd. Eff. Feb. 18, 1988;—Am. 1990, Act 269, Eff. July 1, 1991;—Am. 1993, Act 93, Imd. Eff. July 13, 1993;—Am. 1994, Act 333, Imd. Eff. Oct. 18, 1994;—Am. 2003, Act 196, Imd. Eff. Nov. 10, 2003;—Am. 2008, Act 90, Eff. July 1, 2008.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

**Popular name:** Act 299

### **339.2502 Board of real estate brokers and salespersons; creation.**

Sec. 2502. The board of real estate brokers and salespersons is created.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**Popular name:** Act 299

### **339.2502a Real estate broker, associate real estate broker, and real estate salesperson; term of license.**

Sec. 2502a. Beginning November 1, 2003, the department shall issue a license for real estate broker, associate real estate broker, and real estate salesperson for a term of 3 years.

**History:** Add. 2002, Act 611, Imd. Eff. Dec. 20, 2002.

**Popular name:** Act 299

### **339.2503 Exemptions; definition.**

Sec. 2503. (1) This article shall not apply to an individual, partnership, association, or corporation, who as owner, sells or offers for sale a detached, single family dwelling, duplex, triplex, or quadruplex, which has never been occupied and which was built by the individual, partnership, association, or corporation while licensed under article 24. This article does not apply to an individual, partnership, association, or corporation, who as owner or lessor or as attorney-in-fact acting under a duly executed and recorded power of attorney from the owner or lessor, or who has been appointed by a court, performs an act as a real estate broker or real estate salesperson with reference to property owned by it, unless performed as a principal vocation not through a licensed real estate broker.

(2) This article shall not include the services rendered by an attorney at law as an attorney at law, nor shall it include a receiver, trustee in bankruptcy, administrator, executor, a person selling real estate under order of a court, nor a trustee selling under a deed of trust. This exemption of a trustee shall not apply to repeated or successive sales of real estate by the trustee, unless the sale is made through a licensed real estate broker.

(3) This article does not apply to a person who is regulated under the mortgage brokers, lenders, and servicers licensing act, Act No. 173 of the Public Acts of 1987, being sections 445.1651 to 445.1683 of the Michigan Compiled Laws, and who does not perform any other act requiring a license as a real estate broker, associate broker, or real estate salesperson.

(4) For the purposes of this article, "negotiate the mortgage of real estate" as described in section 2501, means engaging in activity not regulated under Act No. 173 of the Public Acts of 1987.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1987, Act 63, Imd. Eff. June 25, 1987;—Am. 1987, Act 174, Imd. Eff. Nov. 18, 1987;—Am. 1990, Act 269, Eff. July 1, 1991.

**Popular name:** Act 299

### **339.2504 Real estate broker's license; approved classroom courses; application; condition to taking examination; renewal or reinstatement of license; continuing education requirements; exceptions; approval of person offering or conducting course or courses of study; suspension or revocation of approval; prohibited representations; conduct of pre-licensure course; violation; penalties; real estate clinic, meeting, course, or institute; sponsoring studies, research, and programs.**

Sec. 2504. (1) Before receiving a real estate broker's license, an applicant shall submit an application as described in section 2505 and shall have successfully completed not less than 90 clock hours of approved classroom courses in real estate of which not less than 9 clock hours shall be instruction on civil rights law and equal opportunity in housing. The 90 hours shall be in addition to the hours required to obtain a real estate salesperson's license.

(2) Before being permitted to take the real estate salesperson's examination, an applicant shall show proof of successful completion of not less than 40 clock hours of classroom courses in principles of real estate, of which not less than 4 clock hours shall be instruction on civil rights law and equal opportunity in housing.

(3) For purposes of subsections (1) and (2), approved courses may be on the following topics:

- (a) Real estate license law and related regulatory laws.
- (b) Real property law, including property interests and restrictions.
- (c) Federal, state, and local tax laws affecting real property.

- (d) Conveyances, including contracts, deeds, and leases.
- (e) Financing, including mortgages, land contracts, foreclosure, and limits on lending procedures and interest rates.
- (f) Appraisal of real property.
- (g) Design and construction.
- (h) Marketing, exchanging, and counseling.
- (i) The law of agency.
- (j) Sales and office management, including listing and selling techniques.
- (k) Real estate securities and syndications.
- (l) Investments, including property management.

(4) Except as otherwise provided in this subsection, before being permitted to renew an active real estate broker's or real estate salesperson's license, a licensee shall have successfully completed, within the preceding 12 months, not less than 6 clock hours of continuing education approved by the department involving any topics relevant to the management, operation, and practice of real estate and covering changes in economic conditions, law, rules, court cases, and interpretations, or any combination of those changes, relating to real property which are pertinent to the activities of a real estate broker or real estate salesperson. Beginning November 1, 2003, a licensee shall complete not less than 18 hours of continuing education per 3-year license cycle. A licensee shall complete at least 6 hours of the required 18 hours of continuing education courses during the time period from November 1, 2003 and ending on December 31, 2004. During calendar year 2005, a licensee shall complete at least 6 hours of the required 18 hours of continuing education courses. During calendar year 2006, a licensee shall complete at least 4 hours of the required 18 hours of continuing education courses. During calendar year 2007 and thereafter, a licensee shall complete at least 2 hours per calendar year of the required 18 hours of continuing education courses. Any education successfully completed by a licensee for further professional designation and approved by the department as continuing education may be counted toward the total continuing education credits required for the 3-year license cycle. Each licensee, in completing the appropriate number of clock hours, will have the option of selecting the education courses in that licensee's area of expertise, as long as the education courses are approved by the department and as long as at least 2 hours of an education course per calendar year involve law, rules, and court cases regarding real estate. Notwithstanding the provisions of this subsection, the department may renew the license of a licensee who has completed not less than 18 hours of continuing education in the subject matter areas required by this subsection during the 3-year license cycle but has not otherwise met the requirements of this section if the licensee provides evidence satisfactory to the department that he or she has good cause for not complying with the requirements in this subsection.

(5) The department may relicense without examination a licensee whose license has lapsed for less than 3 years if the licensee shows proof of completion of not less than 6 clock hours of continuing education for each year the license was lapsed, on topics as described in subsection (4).

(6) The department may relicense a broker whose license has lapsed for 3 or more continuous years if the licensee provides proof of the successful completion of 1 of the following:

(a) Six clock hours of continuing education for each of the years the license was lapsed on topics described in subsection (4).

(b) Ninety clock hours of instruction described in subsections (1) and (3).

(c) Passing the examination required for licensure as a broker as provided for in section 2505(5).

(7) A salesperson whose license has been lapsed for 3 or more continuous years may be relicensed if the licensee provides proof of the successful completion of 1 of the following:

(a) Six clock hours of continuing education for each of the years the license was lapsed on topics described in subsection (4).

(b) Forty clock hours of instruction described in subsections (2) and (3).

(c) Passing the examination required for licensure as a salesperson as provided in section 2505(5).

(8) The department shall not apply the course credits used to meet continuing education requirements provided in subsections (4) through (7) towards the real estate broker's license education requirements provided in subsection (1), and course credits taken under real estate broker's license education requirements shall not be applied towards the continuing education requirements. The department shall apportion the approved course credits eligible for education requirements in subsection (1) and subsections (4) through (7) to meet either requirement upon the licensee's request.

(9) For real estate brokers, associate brokers, and salespersons who receive a license issued in the second or third years of a 3-year license cycle, continuing education shall be in compliance with subsection (4), except for the following:

(a) A real estate broker, associate broker, or salesperson who receives a license issued in the second year of

the 3-year license cycle is required to complete 12 hours of continuing education to renew his or her license.

(b) A real estate broker, associate broker, or salesperson who receives a license issued in the third year of the 3-year licensing cycle is required to complete 6 hours of continuing education to renew his or her license.

(10) A person who offers or conducts a course or courses of study represented to meet the educational requirements of this article first shall obtain approval from the department and shall comply with the rules of the department concerning curriculum, instructor qualification, grading system, and other related matters. In addition to other requirements imposed under rule, in order to receive approval a course shall be designed to be taught for not less than 1 clock hour, not including time spent on breaks, meals, or other unrelated activities, provided the course is only approved for less than 2 clock hours if, based upon the subject matter, course outline, instructional materials, methodology, and other considerations consistent with rules of the department, the department determines that the course objectives can be effectively met in the proposed time period. The department may suspend or revoke the approval of a person for a violation of this article or of the rules promulgated under this article. A person offering or conducting a course shall not represent that its students are assured of passing an examination required by the department. A person shall not represent that the issuance of departmental approval is a recommendation or indorsement of the person to which it is issued or of a course of instruction given by it. A pre-licensure course approved under this article shall be conducted by a local public school district, a community college, an institution of higher education authorized to grant degrees, or a proprietary school licensed by the department of career development under 1943 PA 148, MCL 395.101 to 395.103.

(11) A person who in operating a school violates subsection (10) is subject to the penalties set forth in article 6.

(12) The department may conduct, hold, or assist in conducting or holding, a real estate clinic, meeting, course, or institute, which shall be open to a person licensed under this article, and may incur the necessary expenses in connection with the clinic, meeting, course, or institute. The department, in the public interest, may assist educational institutions within this state in sponsoring studies, research, and programs for the purpose of raising the standards of professional practice in real estate and the competence of a licensee.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1983, Act 144, Eff. Jan. 1, 1985;—Am. 1984, Act 413, Eff. Mar. 29, 1985;—Am. 2002, Act 611, Imd. Eff. Dec. 20, 2002;—Am. 2003, Act 196, Imd. Eff. Nov. 10, 2003.

**Popular name:** Act 299

**Administrative rules:** R 339.22101 et seq. of the Michigan Administrative Code.

### **339.2505 Real estate broker's license; application; contents; execution of application; effect of certain convictions; place of business; branch office license; contents of application for salesperson's license; proof; examinations.**

Sec. 2505. (1) An applicant for a real estate broker's license shall file an application setting forth the applicant's present address, both of business and residence; the complete address of each former place where the applicant has resided or been engaged in business, or acted as a real estate salesperson, for a period of 60 days or more, during the 5 years immediately preceding the date of application. An applicant for a real estate broker's license shall state the name of the individual, sole proprietorship, partnership, association, corporation, limited liability company, common law trust, or a combination of those entities and the location of the place for which the license is desired, and set forth the period of time which the applicant has been engaged in the business. The application shall be executed by the person, or by an officer or member of the applicant. An applicant for a real estate broker's license which is a partnership, association, corporation, limited liability company, common law trust, or a combination of those entities shall designate which individuals who are officers or members of the partnership, association, limited liability company, or corporation will be performing acts regulated by this article as principals.

(2) The department shall not issue a real estate broker's license to a new applicant who has been convicted of embezzlement or misappropriation of funds.

(3) A real estate broker shall maintain a place of business in this state. If a real estate broker maintains more than 1 place of business within the state, a branch office license shall be secured by the real estate broker for each branch office maintained. A branch office maintained in excess of 25 miles from the city limits in which the broker maintains a main office shall be under the personal, direct supervision of an associate broker.

(4) An applicant for a salesperson's license shall set forth the period of time during which the individual has been engaged in the business, stating the name of the applicant's last employer and the name and the place of business of the individual, partnership, association, limited liability company, corporation, common law trust, or combination of those entities then employing the applicant or in whose employ the applicant is to

enter. The application shall be signed by the real estate broker in whose employ the applicant is to enter.

(5) Before issuing a license, the department may require and procure satisfactory proof of the business experience, competence, and good moral character of an applicant for a real estate broker's or salesperson's license or of an officer or member of an applicant. The department shall require an applicant for a broker's or salesperson's license to pass an examination developed by the department or contracted for with a recognized outside testing agency establishing, in a manner satisfactory to the department, that the applicant has a fair knowledge of the English language, including reading, writing, spelling, and elementary arithmetic; a satisfactory understanding of the fundamentals of real estate practice and of the laws and principles of real estate conveyancing, deeds, mortgages, land contracts, and leases; the obligations of a broker to the public and a principal; and the law defining, regulating, and licensing real estate brokers and salespersons. The department may require written examination or written reexamination of a broker or salesperson, and in that case a passing score satisfactory to the department is required as a condition precedent to relicensure of a broker or salesperson. The department shall require proof that each applicant for a real estate broker's license has the equivalent of 3 years of full-time experience in the business of real estate or in a field that is determined by the department to be relevant and related to the business of real estate.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1981, Act 83, Imd. Eff. July 1, 1981;—Am. 1988, Act 16, Imd. Eff. Feb. 18, 1988;—Am. 1988, Act 463, Eff. Sept. 1, 1989;—Am. 2003, Act 196, Imd. Eff. Nov. 10, 2003.

**Popular name:** Act 299

### **339.2506 Delivering or mailing real estate salesperson's license to broker; display of licenses; notice of change of location; temporary license.**

Sec. 2506. (1) The license of a real estate salesperson shall be delivered or mailed to the real estate broker by whom the real estate salesperson is employed and shall be kept in the custody and control of the broker. A real estate broker shall conspicuously display the real estate broker's license and the license of each real estate salesperson employed by the real estate broker in the real estate broker's place of business. Written notice shall be given to the department by a licensee of a change of either a principal or branch business location.

(2) If the department determines that it will be unable to issue a real estate salesperson's license under subsection (1) within 2 weeks after the department determines that the applicant for a real estate salesperson's license has met all requirements for licensure, or the department is in fact unable to issue the real estate salesperson's license within 2 weeks, the department shall issue to the applicant, without payment of an additional fee, a temporary license pursuant to section 213.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1988, Act 14, Imd. Eff. Feb. 18, 1988;—Am. 1988, Act 463, Eff. Sept. 1, 1989.

**Popular name:** Act 299

### **339.2507 Discharge or termination of real estate salesperson; delivering or mailing salesperson's license to department; application for transfer of license; communication; performing regulated acts without license prohibited.**

Sec. 2507. If a real estate salesperson is discharged or terminates employment with a real estate broker by giving the employer a written notice of the termination, the real estate broker shall deliver or mail by certified mail to the department, within 5 days, the real estate salesperson's license. If a written notice of termination of employment is not served upon the real estate broker by the real estate salesperson, an application to the department for a transfer of license by the real estate salesperson shall be communicated in writing by the department to the real estate broker. As of the date of the communication, the notice shall operate as if a written notice were served by the real estate salesperson upon the real estate broker. The real estate broker, at the time of mailing the real estate salesperson's license to the department, shall address a communication to the last known residence address of the real estate salesperson, which communication shall advise the real estate salesperson that the license has been delivered or mailed to the department. A copy of the communication to the real estate salesperson shall accompany the license when mailed or delivered to the department. A real estate salesperson shall not perform an act regulated by this article either directly or indirectly under authority of the license after the date of the department's receipt of the license from a broker. Another license shall not be issued to a real estate salesperson until the person returns the former pocket card to the department or satisfactorily accounts to the department for the pocket card. Not more than 1 license shall be issued to a real estate salesperson for the same period of time.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1988, Act 463, Eff. Sept. 1, 1989.

**Popular name:** Act 299

### **339.2508 Real estate broker's license; entities to which issued; authorized acts;**

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**transferability; associate real estate broker's license; requirements to which applicant subject; suspension; issuance of new license.**

Sec. 2508. (1) A real estate broker's license may be issued to an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those entities. A real estate broker's license issued to an individual or a sole proprietorship shall entitle the individual named on the license to perform acts regulated by this article. Subject to subsection (2), a real estate broker's license issued to a partnership, association, corporation, common law trust, or a combination of those entities shall entitle those individuals designated as principals under section 2505(1) to perform acts regulated by this article. A broker's license issued to a partnership, association, corporation, common law trust, or a combination of those entities is not transferable.

(2) Before performing acts regulated under this article, each principal shall apply for and obtain, and any other individual may apply for and obtain, an associate real estate broker's license. An applicant for an associate real estate broker's license shall be subject to the same requirements as an applicant for a real estate broker's license. An associate real estate broker's license shall only be issued to individuals.

(3) The associate real estate broker's license of a principal who ceases to be connected with a partnership, association, corporation, common law trust, or a combination of those entities shall be suspended automatically.

(4) An associate real estate broker's license issued to a principal is not transferable. An associate real estate broker's license issued to a nonprincipal may be transferred in the same manner as provided in section 2507 for the transfer of a real estate salesperson's license.

(5) Upon the revocation of a real estate broker's license, the licenses of all real estate salespersons employed by the real estate broker and all affiliated associate real estate brokers shall automatically be suspended, pending a change of employer and the issuance of a new license. A new license shall be issued without charge, if the license is issued during the same term in which the original license was issued.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1988, Act 16, Imd. Eff. Feb. 18, 1988.

**Popular name:** Act 299

**339.2509 Associate real estate broker's license; issuance to principal and nonprincipal; limitation; definitions.**

Sec. 2509. (1) A principal may be issued more than 1 associate real estate broker's license.

(2) A nonprincipal shall not be issued more than 1 associate real estate broker's license as a nonprincipal, but may hold 1 or more associate real estate broker's licenses as a principal.

(3) As used in this section and section 2508:

(a) "Nonprincipal" means an individual who is licensed as an associate real estate broker, but has not been designated as a principal under section 2505(1).

(b) "Principal" means an individual designated as a principal under section 2505(1).

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1988, Act 16, Imd. Eff. Feb. 18, 1988.

**Popular name:** Act 299

**339.2510 Real estate salesperson; commission or valuable consideration.**

Sec. 2510. A real estate salesperson shall not accept from a person other than the real estate salesperson's employer a commission or valuable consideration for the performance of an act specified in this article.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**Popular name:** Act 299

**339.2511 Plan or scheme for selling or promoting sale of real estate; game promotion; promotional sales of property located outside state.**

Sec. 2511. (1) A plan or scheme involving a lottery, contest, game, prize, or drawing shall not be used by a real estate broker or real estate salesperson for the sale or promotion of a sale of real estate. However, a game promotion as defined in and in compliance with section 372a of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.372a of the Michigan Compiled Laws, may be used by a real estate broker or real estate salesperson for any purpose other than the direct promotion of a specific piece of real estate.

(2) A real estate broker who proposes to engage in sales of a promotional nature in this state of property located outside of this state, shall submit to the department a full description of the property and the proposed terms of sale, and the real estate broker and the real estate broker's real estate salespersons shall comply with rules, restrictions, and conditions pertaining to the sale as imposed by the department. An expense incurred by

the department investigating the property and the proposed sale of the property in this state, shall be borne by the real estate broker. A real estate broker or real estate salesperson shall not refer to the corporation and securities commission of this state, or to an officer or employee of the commission, in selling, offering for sale, advertising, or otherwise promoting the sale, mortgage, or lease of property, or shall not make a representation that the property has been inspected or approved or otherwise passed upon by the department, or by a state official, department, or employee.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1990, Act 164, Imd. Eff. July 2, 1990.

**Popular name:** Act 299

### **339.2512 Prohibited conduct; penalties.**

Sec. 2512. A licensee who commits 1 or more of the following is subject to the penalties set forth in article 6:

(a) Except in a case involving property management, acts for more than 1 party in a transaction without the knowledge of the parties.

(b) Fails to provide a written agency disclosure to a prospective buyer or seller in a real estate transaction as defined in section 2517.

(c) Represents or attempts to represent a real estate broker other than the employer without the express knowledge and consent of the employer.

(d) Fails to account for or to remit money coming into the licensee's possession which belongs to others.

(e) Changes a business location without notification to the department.

(f) In the case of a real estate broker, fails to return a real estate salesperson's license within 5 days as provided in section 2507.

(g) In the case of a licensee engaged in property management, violates section 2512c(2), (5), or (6).

(h) Except as provided in section 2512b, shares or pays a fee, commission, or other valuable consideration to a person not licensed under this article including payment to any person providing the names of, or any other information regarding, a potential seller or purchaser of real estate but excluding payment for the purchase of commercially prepared lists of names. However, a licensed real estate broker may pay a commission to a licensed real estate broker of another state if the nonresident real estate broker does not conduct in this state a negotiation for which a commission is paid.

(i) Conducts or develops a market analysis not in compliance with section 2601(a)(ii).

(j) Fails to provide the minimum services as specified in section 2512d(3) when providing services pursuant to a service provision agreement unless expressly waived in writing by the client under section 2517(3).

(k) Except in the case of property management accounts, fails to deposit in the real estate broker's custodial trust or escrow account money belonging to others coming into the hands of the licensee in compliance with the following:

(i) A real estate broker shall retain a deposit or other money made payable to a person, partnership, corporation, or association holding a real estate broker's license under this article pending consummation or termination of the transaction involved and shall account for the full amount of the money at the time of the consummation or termination of the transaction.

(ii) A real estate salesperson shall pay over to the real estate broker, upon receipt, a deposit or other money on a transaction in which the real estate salesperson is engaged on behalf of the real estate broker.

(iii) A real estate broker shall not permit an advance payment of funds belonging to others to be deposited in the real estate broker's business or personal account or to be commingled with funds on deposit belonging to the real estate broker.

(iv) A real estate broker shall deposit, within 2 banking days after the broker has received notice that an offer to purchase is accepted by all parties, money belonging to others made payable to the real estate broker into a separate custodial trust or escrow account maintained by the real estate broker with a bank, savings and loan association, credit union, or recognized depository until the transaction involved is consummated or terminated, at which time the real estate broker shall account for the full amount received.

(v) A real estate broker shall keep records of funds deposited in its custodial trust or escrow account, which records shall indicate clearly the date and from whom the money was received, the date deposited, the date of withdrawal, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. The records shall be subject to inspection by the department. A real estate broker's separate custodial trust or escrow account shall designate the real estate broker as trustee, and the custodial trust or escrow account shall provide for withdrawal of funds without previous notice. This article and the rules promulgated pursuant to this article do not prohibit the deposit of money accepted under this section in a noninterest bearing account of a state or federally chartered savings

and loan association or a state or federally chartered credit union.

(vi) If a purchase agreement signed by a seller and purchaser provides that a deposit be held by an escrowee other than a real estate broker, a licensee in possession of such a deposit shall cause the deposit to be delivered to the named escrowee within 2 banking days after the licensee has received notice that an offer to purchase is accepted by all parties.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1993, Act 93, Imd. Eff. July 13, 1993;—Am. 1993, Act 177, Imd. Eff. Sept. 29, 1993;—Am. 1994, Act 125, Imd. Eff. May 16, 1994;—Am. 1994, Act 333, Imd. Eff. Oct. 18, 1994;—Am. 1996, Act 430, Eff. Jan. 1, 1997;—Am. 2000, Act 436, Imd. Eff. Jan. 9, 2001;—Am. 2002, Act 42, Imd. Eff. Mar. 12, 2002;—Am. 2008, Act 90, Eff. July 1, 2008.

**Popular name:** Act 299

### **339.2512a Action for collection of compensation for performance of act or contract; allegation and proof.**

Sec. 2512a. A person engaged in the business of, or acting in the capacity of, a person required to be licensed under this article, shall not maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article at the time of the performance of the act or contract.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**Popular name:** Act 299

### **339.2512b Actions not constituting participation in real estate transaction or in payment of real estate commissions.**

Sec. 2512b. The following actions do not constitute participation in a real estate transaction or in the payment of real estate commissions:

(a) As an owner or an authorized agent of the owner, offering an existing tenant of the owner's property a consideration of a value of 1/2 month's rent or less for referring a prospective tenant to the owner or the authorized agent of the owner for the purpose of entering into a lease agreement.

(b) As an existing tenant of rental property, accepting a consideration of 1/2 month's rent or less for the referral of prospective tenants.

**History:** Add. 1981, Act 83, Imd. Eff. July 1, 1981.

**Popular name:** Act 299

### **339.2512c Property management performed by real estate broker.**

Sec. 2512c. (1) Except as otherwise provided in this section, all property management duties, responsibilities, and activities performed by a real estate broker and his or her agent engaged in property management shall be governed by and performed in accordance with a property management employment contract.

(2) A real estate broker who engages in property management shall maintain property management accounts separate from all other accounts. Except as provided in this section, a property management account shall be managed in accordance with the property management employment contract.

(3) A property management account may be an interest-bearing account or instrument, unless the property management employment contract provides to the contrary. The interest earned on a property management account shall be handled in accordance with the property management employment contract.

(4) A real estate broker or any designated employee of the real estate broker engaged in property management may be signatory on drafts or checks drawn on property management accounts.

(5) A person who engages in property management shall maintain records of funds deposited and withdrawn from property management accounts. Property management account records shall indicate the date of the transaction, from whom the money was received or to whom it was given, and other pertinent information concerning the transaction the property management employment contract may require.

(6) A real estate broker engaged in property management shall render an accounting to his or her property management client and remit all money strictly in accordance with the property management employment contract.

(7) All records required to be kept pursuant to this section or pursuant to the property management employment contract shall be subject to inspection by the department.

**History:** Add. 1994, Act 333, Imd. Eff. Oct. 18, 1994.

**Popular name:** Act 299

### **339.2512d Service provision agreement; conduct by real estate broker or real estate**



**salesperson; services; misleading public prohibited; waiver of services in limited service agreement.**

Sec. 2512d. (1) A real estate broker or real estate salesperson acting pursuant to a service provision agreement shall perform the duties imposed in subsection (2). A real estate broker may authorize a designated agent to represent the client, so long as that authorization is in writing.

(2) A real estate broker or real estate salesperson acting pursuant to a service provision agreement owes, at a minimum, the following duties to his or her client:

(a) The exercise of reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.

(b) The performance of the terms of the service provision agreement.

(c) Loyalty to the interest of the client.

(d) Compliance with the laws, rules, and regulations of this state and any applicable federal statutes or regulations.

(e) Referral of the client to other licensed professionals for expert advice related to material matters that are not within the expertise of the licensed agent.

(f) An accounting in a timely manner of all money and property received by the agent in which the client has or may have an interest.

(g) Confidentiality of all information obtained in the course of the agency relationship, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who is not an agent of the client.

(3) A real estate broker or real estate salesperson acting pursuant to a service provision agreement shall provide the following services to his or her client:

(a) When the real estate broker or real estate salesperson is representing a seller or lessor, the marketing of the client's property in the manner agreed upon in the service provision agreement.

(b) Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease.

(c) Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived.

(d) After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement.

(e) For a broker or associate broker who is involved at the closing of a real estate or business opportunity transaction furnishing, or causing to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associated broker showing each party all receipts and disbursements affecting that party.

(4) A real estate broker or real estate salesperson representing a seller under a service provision agreement shall not advertise the property to the public as "for sale by owner" or otherwise mislead the public to believe that the seller is not represented by a real estate broker.

(5) The services described in subsection (3)(b), (c), and (d) may be waived in a limited service agreement.

**History:** Add. 2008, Act 90, Eff. July 1, 2008.

**Popular name:** Act 299

**339.2513 Filing bond or posting cash deposit as condition precedent to issuance of license or removal of suspension; action by injured person.**

Sec. 2513. If an application for a license is made by a person whose license has been denied, suspended, or revoked as a result of disciplinary action for violation of this article or of the rules promulgated under this article, the department may require as a condition precedent to the issuance of a license to the applicant or the removal of suspension, that the applicant file or have on file with the department a bond for a period not to exceed 5 years, issued by an admitted surety insurer or cash in a sum to be fixed by the department, based upon the magnitude of the operations of the applicant, not to exceed the sum of \$5,000.00 in which this state shall appear as the insured. If the department orders the filing of a bond or the posting of a cash deposit, a person injured by an unlawful act or omission of the applicant may bring an action in a proper court on the bond or a claim against the cash deposit for the amount of the damage suffered as a result to the extent covered by the bond or cash deposit.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**Popular name:** Act 299

**339.2514 Real estate broker or real estate salesperson; nonresident applicant; consent to**

**service of process; application; disposition of process or pleading.**

Sec. 2514. A nonresident of this state may become a real estate broker or a real estate salesperson by conforming to the requirements of this article. A nonresident applicant shall file an irrevocable consent that an action may be commenced against the applicant in the proper court of a county of this state in which a cause of action may arise in which the plaintiff may reside, by the service of process or pleading authorized by the laws of this state on the department, the consent stipulating and agreeing that service of process or pleadings on the department shall be taken and held in court to be as valid and binding as if due service had been made upon the applicant in this state. An instrument containing a consent shall be authenticated by a seal, if a corporation, or by the acknowledged signature of a member or officer of the corporation, if otherwise. An application, except from an individual, shall be accompanied by the certified copy of the resolution of the proper officer or managing board authorizing the proper officer to execute the application. If a process or pleading mentioned in this article is served upon the department it shall be by duplicate copies, 1 of which shall be filed in the department and the other immediately forwarded by registered mail to the main office of the applicant against which the process or pleading is directed.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**Popular name:** Act 299

**339.2515 Listing agreement; discrimination prohibited; burden of proof; legal and equitable remedies.**

Sec. 2515. (1) A listing agreement entered into between the broker and seller or lessor of property shall contain language that discrimination because of religion, race, color, national origin, age, sex, disability, familial status, or marital status on the part of the real estate broker, real estate salesperson, seller, or lessor is prohibited.

(2) This article shall not authorize the department to assume any facts not in evidence or compel a party to prove innocence of charges before the charges have been proven by the department. The department shall at all times bear the burden of proof to all charges made against a party.

(3) This article shall not diminish the right of a party to pursue and utilize direct and immediate legal or equitable remedies in a court of competent jurisdiction.

**History:** 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1981, Act 83, Imd. Eff. July 1, 1981;—Am. 1993, Act 93, Imd. Eff. July 13, 1993;—Am. 1998, Act 90, Imd. Eff. May 13, 1998.

**Popular name:** Act 299

**339.2516 Repealed. 1981, Act 83, Imd. Eff. July 1, 1981.**

**Compiler's note:** The repealed section pertained to renewal fee for license.

**Popular name:** Act 299

**339.2517 Disclosure of agency relationship.**

Sec. 2517. (1) A licensee shall disclose to a potential buyer or seller in a real estate transaction all types of agency relationships available and the licensee's duties that each agency relationship creates before the disclosure by the potential buyer or seller to the licensee of any confidential information specific to that potential buyer or seller.

(2) Unless knowingly waived by execution of a limited service agreement, a real estate broker or real estate salesperson providing services under any service provision agreement shall, at a minimum, provide to the client the duties described in section 2512d(2) and the services described in section 2512d(3).

(3) The disclosure of the type of agency relationship shall be in writing, shall be provided to the client, and shall substantially conform to the following:

**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS**

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of agency relationship you have with that licensee. A real estate transaction is a transaction involving the sale or lease of any legal or equitable interest in real estate consisting of not less than 1 or not more than 4 residential dwelling units or consisting of a building site for a residential unit on either a lot as defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, or a condominium unit as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104.

(1) An agent providing services under any service provision agreement owes, at a minimum, the following duties to the client:

(a) The exercise of reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.

(b) The performance of the terms of the service provision agreement.

- (c) Loyalty to the interest of the client.
  - (d) Compliance with the laws, rules, and regulations of this state and any applicable federal statutes or regulations.
  - (e) Referral of the client to other licensed professionals for expert advice related to material matters that are not within the expertise of the licensed agent.
  - (f) An accounting in a timely manner of all money and property received by the agent in which the client has or may have an interest.
  - (g) Confidentiality of all information obtained within the course of the agency relationship, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who is not an agent of the client.
- (2) A real estate broker or real estate salesperson acting pursuant to a service provision agreement shall provide the following services to his or her client:
- (a) When the real estate broker or real estate salesperson is representing a seller or lessor, the marketing of the client's property in the manner agreed upon in the service provision agreement.
  - (b) Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease.
  - (c) Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived.
  - (d) After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement.
  - (e) For a broker or associate broker who is involved at the closing of a real estate or business opportunity transaction furnishing, or causing to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associated broker showing each party all receipts and disbursements affecting that party.

Michigan law requires real estate licensees who are acting as agents of sellers or buyers of real property to advise the potential sellers or buyers with whom they work of the nature of their agency relationship.

#### Seller's Agents

A seller's agent, under a listing agreement with the seller, acts solely on behalf of the seller. A seller can authorize a seller's agent to work with subagents, buyer's agents and/or transaction coordinators. A subagent is one who has agreed to work with the listing agent, and who, like the listing agent, acts solely on behalf of the seller. Seller's agents and subagents will disclose to the seller known information about the buyer which may be used to the benefit of the seller. Individual services may be waived by the seller through execution of a limited service agreement. Only those services set forth in paragraph (2)(b), (c), and (d) above may be waived by the execution of a limited service agreement.

#### Buyer's Agents

A buyer's agent, under a buyer's agency agreement with the buyer, acts solely on behalf of the buyer. Buyer's agents and subagents will disclose to the buyer known information about the seller which may be used to benefit the buyer. Individual services may be waived by the buyer through execution of a limited service agreement. Only those services set forth in paragraph (2)(b), (c), or (d) above may be waived by execution of a limited service agreement.

#### Dual Agents

A real estate licensee can be the agent of both the seller and the buyer in a transaction, but only with the knowledge and informed consent, in writing, of both the seller and the buyer.

In such a dual agency situation, the licensee will not be able to disclose all known information to either the seller or the buyer.

The obligations of a dual agent are subject to any specific provisions set forth in any agreement between the dual agent, the seller, and the buyer.

#### Licensee Disclosure (check one)

I hereby disclose that the agency status of the licensee named below is:

- ☐ Seller's Agent
- ☐ Seller's Agent - limited service agreement
- ☐ Buyer's Agent
- ☐ Buyer's Agent - limited service agreement
- ☐ Dual Agent
- ☐ None of the above

#### Affiliated Licensee Disclosure (check one)

☐ Only the licensee's broker and a named supervisory broker have the same agency relationship as the

licensee named below. If the other party in a transaction is represented by an affiliated licensee, then the licensee's broker and all named supervisory brokers shall be considered disclosed consensual dual agents.

\_\_\_\_ All affiliated licensees have the same agency relationship as the licensee named below.

Further, this form was provided to the buyer or seller before disclosure of any confidential information.

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
Date

Acknowledgment

By signing below, the parties acknowledge that they have received and read the information in this agency disclosure statement and acknowledge that this form was provided to them before the disclosure of any confidential information.

\_\_\_\_\_  
Potential Buyer/Seller (circle one)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Potential Buyer/Seller (circle one)

\_\_\_\_\_  
Date

(4) On a separate form, the following information in the following format shall be provided to a client desiring to waive any of the services required under section 2512d(3)(b), (c), and (d) by execution of a limited service agreement:

LIMITED SERVICE AGREEMENT

Pursuant to Michigan law certain services provided by a real estate licensee may be waived.

A real estate licensee is required to perform certain services for his or her client unless these services are waived by the client. By signing below, you agree that the real estate licensee will not be required to perform the services initialed (only initial the services waived).

Initial if waived:

-Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease your property or the property you seek to purchase or lease.

-Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived.

-After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement.

Agreement to Waive

By signing below, I acknowledge that the duties owed to me pursuant to Michigan law have been explained to me and that I knowingly agree that the real estate licensee who represents me will not provide the services that are initialed above. I also understand that in any proposed real estate transaction, no other real estate licensee is required to provide the waived services unless I subsequently hire them to do so. I also acknowledge that in order to protect my interests I may need to retain other professionals, such as an attorney.

\_\_\_\_\_  
Seller or Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Seller or Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Real Estate Broker or Salesperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brokerage Name

(5) This article does not prevent a licensee from acting as a transaction coordinator upon proper notice to

all parties to a real estate transaction.

(6) A broker and a client may enter into a designated agency agreement. In the absence of a written designated agency agreement, a client is considered to have an agency relationship with the broker and all affiliated licensees.

(7) A designated agency agreement shall contain the name of all associate brokers who are authorized to act as supervisory brokers. If designated agents who are affiliated licensees represent different parties in the same real estate transaction, the broker and all supervisory brokers are considered disclosed consensual dual agents for that real estate transaction. Designated agents who are affiliated licensees representing different parties in the same transaction shall notify their clients that their broker represents both buyer and seller before an offer to purchase is made or presented.

(8) Except as otherwise provided in subsection (7), a client with a designated agency agreement is not considered to have an agency relationship with any affiliated licensees of the designated agent. Two designated agents who are affiliated licensees may each represent a different party in the same transaction and shall not be considered dual agents. The designated agent's knowledge of confidential information of a client is not imputed to any affiliated licensee not having an agency relationship with that client.

(9) A designated agent shall not disclose confidential information of a client to any licensee, whether or not an affiliated licensee, except that a designated agent may disclose to any supervisory broker confidential information of a client for purposes of seeking advice or assistance for the benefit of the client. A licensee who represents a client in an agency capacity does not breach any duty or obligation owed to that client by failing to disclose to that client information obtained through a present or prior agency relationship.

(10) A listing agreement or a buyer's agency agreement may be amended to establish a designated agency relationship, to change a designated agent, or to change supervisory brokers at any time pursuant to a written addendum signed by the parties.

(11) As used in this section:

(a) "Affiliated licensees" means individuals licensed as salespersons or associate brokers who are employed by the same broker.

(b) "Buyer" means a purchaser, tenant, or lessee of any legal or equitable interest in real estate.

(c) "Buyer's agent" means a licensee acting on behalf of the buyer in a real estate transaction who undertakes to accept the responsibility of serving the buyer consistent with those fiduciary duties existing under common law.

(d) "Designated agent" means an individual salesperson or an associate broker who is designated by the broker as the client's legal agent pursuant to a designated agency agreement.

(e) "Designated agency agreement" means a written agreement between a broker and a client in which an individual salesperson or associate broker affiliated with that broker is named as that client's designated agent.

(f) "Dual agent" means a licensee who is acting as the agent of both the buyer and the seller and provides services to complete a real estate transaction without the full range of fiduciary duties owed by a buyer's agent and a seller's agent.

(g) "Real estate transaction" means the sale or lease of any legal or equitable interest in real estate where the interest in real estate consists of not less than 1 or not more than 4 residential dwelling units or consists of a building site for a residential unit on either a lot as defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, or a condominium unit as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104.

(h) "Seller" means the equitable or legal owner of real estate.

(i) "Seller's agent" means a licensee acting on behalf of the seller in a real estate transaction who undertakes to accept the responsibility of serving the seller consistent with those fiduciary duties existing under common law.

(j) "Supervisory broker" means an associate broker designated in a written agency agreement to act in a supervisory role in an agency relationship.

(k) "Transaction coordinator" means a licensee who is not acting as the agent of either the buyer or the seller.

**History:** Add. 1993, Act 93, Eff. Jan. 1, 1994;—Am. 2000, Act 236, Imd. Eff. June 27, 2000;—Am. 2000, Act 436, Imd. Eff. Jan. 9, 2001;—Am. 2008, Act 91, Eff. July 1, 2008.

**Compiler's note:** In subsection (2)(e), the phrase "associated broker" evidently should read "associate broker".

**Popular name:** Act 299

### **339.2518 Prohibited actions.**

Sec. 2518. An action shall not be brought against a real estate broker, an associate broker, or a real estate salesperson under the following circumstances:



(a) For failure to disclose to a purchaser or lessee of real property that a former occupant has or is suspected of having a disability. As used in this section, "disability" means handicap as that term is defined and interpreted under, and disclosure of which would constitute unlawful discrimination under, sections 804, 805, 806, or 817 of the fair housing act, title VIII of the civil rights act of 1968, Public Law 90-284, 42 U.S.C. 3604, 3605, 3606, and 3617.

(b) For failure to disclose to a purchaser or lessee of real property that the real property was or was suspected to have been the site of a homicide, suicide, or other occurrence prohibited by law which had no material effect on the condition of the real property or improvements located on the real property.

(c) For failure to disclose any information from the compilation that is provided or made available under section 8(2) of the sex offenders registration act, 1994 PA 295, MCL 28.728.

**History:** Add. 1993, Act 93, Imd. Eff. July 13, 1993;—Am. 1998, Act 90, Imd. Eff. May 13, 1998;—Am. 1998, Act 437, Imd. Eff. Dec. 30, 1998.

**Popular name:** Act 299